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25 *Attorneys for Defendants*
26 *Cox Communications, Inc.; CoxCom, LLC; and*
27 *Cox Communications California, LLC*

28 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

21 ENTROPIC COMMUNICATIONS,
22 LLC,

23 Plaintiff,

24 v.

25 COX COMMUNICATIONS, INC.;
26 COXCOM, LLC; and COX
COMMUNICATIONS CALIFORNIA,
LLC,

27 Defendants.

Case No. 2:23-cv-01049-JWH-KES

**COX COMMUNICATIONS, INC.,
COXCOM, LLC, AND COX
COMMUNICATIONS
CALIFORNIA, LLC'S NOTICE
OF AMENDED
COUNTERCLAIMS AND
OPPOSITION TO MAXLINEAR'S
MOTION TO DISMISS**

DEMAND FOR JURY TRIAL

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS,
7 LLC; MAXLINEAR
8 COMMUNICATIONS LLC; AND
9 MAXLINEAR, INC.

Counter-Defendants.

1 Defendants and Counter-Claimants Cox Communications, Inc., CoxCom,
 2 LLC, and Cox Communications California, LLC (collectively “Cox”) oppose
 3 Counter-Defendants MaxLinear Communications LLC and MaxLinear Inc.’s
 4 (“MaxLinear”) Motion to Dismiss Cox’s counterclaims under Fed. R. Civ. Pro.
 5 12(b)(6). (Dkt. 160, the “Motion”). Cox opposes the grounds on which MaxLinear
 6 moved.

7 As detailed below, while there is no merit to MaxLinear’s Motion, Cox has
 8 elected to moot same by filing amended counterclaims that further address the issues
 9 MaxLinear raises as well as facts uncovered via further discovery. *See* Cox’s Answer
 10 and Defenses to Complaint and First Amended Counterclaims (“Amended
 11 Counterclaims”). Cox submits its Amended Counterclaims pursuant to Fed. R. Civ.
 12 Pro. 15(a)(1)(B), which states that a party may amend its pleading once as a matter of
 13 course, “if the pleading is one to which a responsive pleading is required” and the
 14 amendment is no later than “21 days after service of a motion under Rule 12(b), (e),
 15 or (f).” Cox’s counterclaim is a pleading to which a responsive pleading is required,
 16 Cox has not before amended its pleadings as of right before submitting this
 17 amendment, and Cox’s amendment is submitted within 21 days after service of the
 18 Motion. *See, e.g., Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2010 WL
 19 4569893, at *2 (N.D. Calif. Nov. 5, 2010) (“Nike filed its Amended Counterclaims,
 20 less than 21 days after Bauer filed the pending Motion to Strike and Dismiss” and
 21 “pursuant to Rule 15(a)(1), Nike was not required to seek leave of Court to file the
 22 Amended Counterclaims.”).

23 Cox demonstrates below that, while Cox’s existing pleadings suffice despite
 24 MaxLinear’s contrary arguments, the Amended Counterclaims that are based upon
 25 further discovery obtained in this action address, and moot, all the points MaxLinear
 26 raises.

1 **MaxLinear's Standing Argument:** MaxLinear asserted that Cox's breach of
2 contract and unjust enrichment actions lack standing. These are quintessential
3 common-law analogues and are precisely the type of actions that confirm standing.
4 See, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021); *In re Facebook,*
5 *Inc. Internet Tracking Litigation*, 956 F.3d 589, 599 (9th Cir. 2020). Nonetheless,
6 Cox's Amended Counterclaims address MaxLinear's arguments.

7 MaxLinear first urged that the counterclaims contradict the idea that a breach
8 could or did occur because they allege Cox already received a sublicense and Cox did
9 not plead the Asserted Patents are essential to practicing DOCSIS. (ECF No. 160, at
10 pp. 14-15). Cox disagrees. The counterclaims plausibly demonstrated Cox is an
11 intended third-party beneficiary to the DOCSIS License Agreement MaxLinear
12 executed, Plaintiff's averments in the complaint demonstrate one or more of the
13 Asserted Patents are essential to compliance with the DOCSIS standards, and
14 MaxLinear's assignment of those patents constituted a breach. (E.g., ECF No. 89, at
15 ¶¶286-90, 299-303). Cox nonetheless amended its pleading to further address these
16 points. (Amended Counterclaims, at ¶¶287, 294-98, 302-308, 310-18).

17 MaxLinear next claimed that Cox failed to show concrete, particularized injury
18 capable of redress. (ECF No. 160, at p. 15). Cox's counterclaims already plausibly
19 demonstrated that MaxLinear's breaches created a void assignment and deprived Cox
20 of the benefits of the DOCSIS License Agreement and caused it to incur the expense
21 of defending this case that would not otherwise have been brought. (ECF No. 89, at
22 ¶¶ 286-290, 291, 294-296, 307-308). The existing counterclaims likewise detailed the
23 unjust enrichment facts that showed relevant injuries under applicable law. (ECF No.
24 89, at ¶¶ 283-86, 292-93, 316-18). Nonetheless, the Amended Counterclaims at ¶¶
25 310-18 further detail facts establishing relevant injuries, including additional facts
26 revealed following discovery.

1 Finally, MaxLinear asserted that the counterclaims are unripe because they do
 2 not affirmatively allege any asserted patent is essential to practice the DOCSIS
 3 specifications. (ECF No. 160, at 15-16). Cox disagrees, particularly given the
 4 averments Plaintiff set forth in the Complaint, which Cox points to in the original
 5 counterclaims. (ECF No. 89, at ¶¶ 299-300). Cox nonetheless amended its pleading
 6 to further address this point and provide further averments concerning these points
 7 and related discovery like the infringement contentions Plaintiff has since lodged.
 8 (Amended Counterclaims, at ¶¶ 306-07). MaxLinear's standing and ripeness
 9 complaints are accordingly moot.

10 ***MaxLinear's Rule 8 Argument:*** MaxLinear urged that the existing
 11 counterclaims failed to adequately address whether the DOCSIS License Agreement
 12 applies. (ECF No. 160, at 17). Cox disagrees. (*See* ECF No. 89, at ¶¶ 284-90, 292-93,
 13 299-300). Cox nonetheless amended its pleading to provide further averments
 14 addressing this point. (*See, e.g.,* Am. Counterclaims, at ¶¶ 287, 294-95).

15 ***MaxLinear's Rule 12 Arguments:*** MaxLinear asserted, largely by ignoring the
 16 existing averments, multiple defects in Cox's breach of contract claims. (ECF No.
 17 160, at 17-24). Cox disagrees with those arguments because its existing breach of
 18 contract counterclaim fully identified the relevant contract, privity, Cox's status and
 19 performance as an intended third-party beneficiary, and MaxLinear's breaches that
 20 seek to avoid the DOCSIS license and affirmatively strip away that encumbrance from
 21 the asserted patents to cause Cox the damage and injury associated with having to
 22 defend this case. (ECF No. 89, at ¶¶ 284-96, 299-303). While MaxLinear also urged
 23 that Cox had to perform certain marking obligations, that is neither factually accurate
 24 nor the rule applicable to third party beneficiaries in California or elsewhere. *See, e.g.,*
 25 *Nat'l Rural Telecomms. Co-op v. DIRECTV, Inc.*, 319 F. Supp. 2d 1059, 1068 (C.D.
 26 Cal. 2003). In any event, Cox's Amended Counterclaims, including in ¶¶ 294-98,
 27 302-18, further supplement these aspects of its claims and identify additional bases
 28

1 flowing from discovery for concluding that MaxLinear breached the DOCSIS License
2 Agreement.

3 MaxLinear also incorrectly claimed that California does not recognize Cox's
4 unjust enrichment claim, which MaxLinear also says Cox failed to plead adequately.
5 Both propositions are incorrect, even putting aside any choice of law issue. *See, e.g.,*
6 *Stark v. Patreon, Inc.*, 635 F. Supp. 3d 841, 857 (N.D. Cal. 2022). Cox's original
7 counterclaims pled the facts demonstrating MaxLinear's unjust enrichment. (*E.g.*,
8 ECF No. 89, at ¶¶ 283-86, 292-93, 316-18). But, in any event, Cox's Amended
9 Counterclaims at ¶¶ 294-98, 310-18, 336-39, similarly provide averments that further
10 detail the basis for Cox's unjust enrichment claim – whether labeled as such or a
11 “quasi-contract” claim for restitution.

12 Accordingly, the Amended Counterclaims both fully address and moot
13 MaxLinear's positions on the adequacy of Cox's breach of contract and unjust
14 enrichment claims.

15 * * *

16 The Motion is without merit. Independently, it is moot as a matter of law
17 because the Amended Counterclaims are the only operative pleading. *See Ramirez v.*
18 *County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (“Plaintiff's Second
19 Amended Complaint superseded the First Amended Complaint, and the First
20 Amended Complaint ceased to exist. Because the Defendants' motion to dismiss
21 targeted the Plaintiff's First Amended Complaint, which was no longer in effect, we
22 conclude that the motion to dismiss should have been deemed moot”); *Phillips v.*
23 *County of Riverside*, No. 5:20-cv-01266, 2023 WL 4290379, at *1 (C.D. Cal. May
24 12, 2023) (“Because Defendants' Motion to Dismiss targeted Plaintiff's SAC, which
25 is no longer in effect, Defendants' Motion to Dismiss is moot”); *Bauer*, 2010 WL
26 4569893, at *2 (denying motion to dismiss amended counterclaims because “[o]nce
27
28

1 filed, an amended pleading supersedes the original pleading in its entirety.”) (citation
2 omitted).

3 Finally, even if Cox did not have the option to exercise its amendment as of
4 right, the amendments Cox has made are appropriate and allowable under controlling
5 authority. Rule 15(a)(2) states that “[t]he court should freely give leave [to amend]
6 when justice so requires.” There is a strong public policy in favor of permitting
7 amendment, and the Ninth Circuit has made clear that “Rule 15’s policy of favoring
8 amendments to pleadings should be applied with ‘extreme liberality.’” *Bowles v.*
9 *Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Court has already found that Cox had
10 good cause and acted with diligence in presenting its original motion to amend, and
11 that justice required adding Cox’s counterclaims. (ECF No. 86, at 3). MaxLinear says
12 nothing to undercut those findings and, accordingly, there is no justification for its
13 legally incorrect and factually unsupported assertion that amendment is improper.
14 MaxLinear’s only argument against amendment is its incorrect futility point, but
15 Cox’s amendment addresses any such issue in any event.

16 Accordingly, Cox requests the Court deny the Motion.

17 Dated: January 9, 2024

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